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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7776 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? No.

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3. Whether Their Lordships wish to see the fair copy of the judgement? No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge? No.

STATE OF GUJARAT

Versus

MANGABHAI LAXMANBHAI

Appearance:

Mr.V.B.Gerania, AGP for Petitioner

MR HK RATHOD for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 22/07/98

ORAL JUDGEMENT

Rule. Mr. H.K.Rathod waives service of notice of Rule on behalf of the respondents.

2. The State of Gujarat has preferred the present writ petition to challenge the award passed by the Labour Court Bhavnagar in Reference no.99 of 1995 on 7.10.97. Respondent Maganbhai Laxmanbhai claimed that he was a permanent Belder that the Executive Engineer R & B Sub-division. Botad Bhavnagar since 1.4.85. He further claimed that he was working in that post since 1.4.1985 to 1.9.1991 and he has been illegally and improperly dismissed from service on 1.9.1991. Though he was discharged on 1.9.1991 he made his representation for reinstatement in service 17.1.1994 but his request was turned down. He therefore, raised an industrial dispute which resulted into Reference No. 99 of 1995.

2. The petitioner has contended before the Labour Court that the claim of the respondent that he was working as regular Belder and that there was a permanent post of Belder and therefore, he should not have been terminated. It was further pointed out that despite that he was taken as a daily wager whenever work was available. It was further contended that he never completed 24 days service in a year and therefore, he cannot be treated as a permanent employee. It was further contended that as a matter of fact the respondent himself had ceased to attend to his duties from 1.4.1990. Therefore, in the circumstances there could not be any reinstatement of the respondent.

3. The Labour Court after recording evidence of both the sides and appreciation of the evidence led before the Labour Court, he came to the conclusion that the respondent was holding a permanent post and he was working from 1.4.1985 till 1.9.1991. He also found that as he had worked for more than 240 days in a year after he joined the service on 1.4.85, his services could not be terminated without following the procedure laid down by section 25F of the I.D.Act but admaittedly as the said procedure was not followed, he was entitled for reinstatement. Taking into consideration the laches committed by the respondent in making representation for reinstatement, the Labour Court directed to reinstate the respondent with 70 percent back wages from the date of termination.

4. The Learned advocate for the petitioner very vehemently urged before me that the Labour Court has not at all properly appreciated the evidence on record and the finding recorded by him were perverse and grossly

erroneous and therefore, this court should not interfere with the same. He urged before me that as a matter of fact the department had produced before the Labour Court, the document to show as to on what date and how many days the respondent attended to his duties but that claim is not at all considered by the Labour Court and without considering the same the Labour Court has recorded a wrong finding that the workmen had completed 240 days service in a year. He further submitted before me that the work which the respondent was carrying was not of permanent nature and the respondent was appointed as a daily wager and the Labour Court did not take into consideration this aspect and the Labour Court has committed an error in holding that he was a regular workman.

5. But if the judgment delivered by the Labour Court is carefully read then it is very difficult to accept the submission made on behalf of the petitioner. The Labour Court has mentioned in its judgment that the the applicant had given an application and had called upon the department to produce muster rolls and pay rolls in order to establish his claim that he was regularly working with the present petitioner. The Labour Court further says that inspite of specific order directing the petitioner to produce said document as sought by the workman , no documents were produced before the Labour Court. No doubt the petitioner had produced a document exh.12 which is at Annexure.B to this petition. Now as regards this document, it is as a matter of fact a statement showing about various dates on which the respondent attended his duties. The Labour Court has clearly mentioned that said document which was produced before the Labour Court was not bearing the seal of the department in order to show that it was a correct and genuine document. This document exh.12 must have been prepared on the strength of the entries in the pay rolls. Therefore, when the said document was prepared on the strength of the entries in the pay rolls, there was no justification in not producing before the the Court the pay rolls. Therefore, in the circumstances the Labour Court was justified in rejecting the consideration of the said document which is in the nature of secondary evidence because the original entries must be in the pay rolls and the correctness of the statement could be found by tallying entries in the original pay rolls. Therefore, in the circumstances, rejection of the said document by the Labour Court could not be said to be a perversity or an error.

8. The respondent has made not only a claim in the

claim petition that he was on a regular post and he was also working from 1.5.81 but he had also made incorrect statement on oath to that effect. The petitioner had not produced any order by which he was appointed, if at all the respondent was appointed as a daily wager, the appointment order itself would have been disclosed that fact. The failure of the petitioner to produce such an order before the Labour Court is a circumstance which the Labour Court has taken into consideration for the purpose of considering the claim of the petitioner as well as the claim for the respondent before me. On behalf of the present petitioner one witness was examined and the said witness is Karsanbhai Dharamsibhai and he has deposed at exh.14 and he has stated that the work which the respondent was doing was of a permanent nature. This was an admission of the witness before the Labour Court. No doubt the said witness had stated in the earlier portion that the respondent was not holding any permanent job. Therefore the finding recorded by the Labour Court that there was a permanent post and said permanent post and the said permanent post was occupied by the respondent could not be said to be either perverse or grossly erroneous. Admittedly, present respondent was retrenched under section 25F of the ID Act. The Labour Court had found that the workmen had completed more than 240 days service in a year and therefore, his termination could be by following the procedure under section 25F and as that was not done, the Labour Court was quite justified in ordering reinstatement of the workman.

9. The workman has admittedly not taken any steps after his dismissal on 1.9.91 and upto 17.1.94. Therefore, taking into consideration this delay caused by the workmen in raising an industrial dispute and also taking into consideration that the work which the present respondent was doing was not any skilled work and was the work of a labourer I hold that the order of the Labour Court, only as regards the payment of back wages will have to be interfered with. I would therefore, modify the order of the Labour Court by directing reinstatement of the respondent with 70 percent back wages as ordered instead of from the date of dismissal but from 17.1.94 with continuity of service. Present petitioner should implement this modified award of the Labour Court within four weeks from the date of receipt of this Court. Rule made absolute to the aforesaid extent with no order as to costs.

In view of the above order the Civil Application No 1726 of 1998 stands disposed with no order as to costs.

(S.D.Pandit.J)